

Annual Report on the Activities of the Rental Office

January 1-December 31, 2008

**Submitted by
Hal Logsdon
Rental Officer**

The Residential Tenancies Act

The passage of the NWT *Residential Tenancies Act* in 1988 was part of a general trend in Canada to recognize residential landlord-tenant relationships as one of contract rather than an interest in land. The Act also established a tribunal dispute resolution mechanism which was designed to be less formal and more expedient than the courts. Older practices such as distraint for rent were abolished and common law contract principles such as mitigation of damages and contract frustration were established. The Act enabled the Minister to appoint one or more rental officers who would provide information to landlords and tenants and mediate or adjudicate landlord/tenant disputes, leaving the Supreme Court as the court of appeal.

The *Residential Tenancies Act* was amended in 2008 but the amendments were not brought into force during the year pending the approval of regulations. The amendments to the Act are intended to update the Act, amend several errors, provide additional remedies in order to better protect landlords and tenants, and streamline the administrative process.

The Role of the Rental Office

- **A Provider of Information to Landlords and Tenants**

The Rental Office is a convenient and accessible place for landlords and tenants to obtain information regarding their rights and obligations. Many landlord-tenant problems are solved simply by providing landlords and tenants with information concerning their respective rights and responsibilities. Many tenants and a surprising number of landlords are unaware of the legislation that governs their relationship or the tenancy agreement that forms the contract between them. The provision of information is probably the single most important function of the office, often serving to eliminate conflict and problems before they start.

The Rental Office maintains a toll-free telephone number which can be used anywhere in Canada. We receive numerous calls each day seeking information concerning rights and obligations of landlords and tenants and the process for filing applications and resolving disputes. Increasingly, we also receive and respond to e-mail inquiries which can be made via our webpage.

The Rental Office also provides written information, including a simple to read booklet outlining the major aspects of the *Residential Tenancies Act*, short fact sheets on selected topics and numerous standard forms. Like the day-to-day inquiries, the written material helps both landlords and tenants acquire an understanding of mutual rights and responsibilities to help to solve problems before they start.

The Department of Justice maintains a website for the Rental Office that contains all of the written material as well as a link to the legislation and a searchable database of Rental Officer decisions.

The Rental Officer is also available to make presentations or participate in forums with tenants, property managers or others involved in residential tenancy matters. We provide these services free of charge in the belief that informed and knowledgeable landlords and tenants are more likely to respect the rights and obligations of each other and less likely to end up in a conflict situation.

- **Dispute Resolution**

Landlords and tenants are encouraged to attempt to resolve disputes themselves. Often, the information provided to the parties regarding their legal rights and obligations helps the parties resolve the dispute but a dispute resolution process is available to both landlords and tenants. The dispute resolution process can be initiated by a landlord or tenant by filing an Application to a Rental Officer.

On the filing of a application, the Rental Officer may investigate to determine the facts related to the dispute. Applications involving the physical condition of premises are often best understood through an inspection of the unit. Similarly, applications involving third parties, such as utility suppliers are often investigated.

Occasionally, the investigation leads to a resolution of the dispute by agreement. For example, a tenant may file an application when a security deposit has not been returned and no statement of the deposit has been provided to the tenant. A brief investigation into the matter may reveal that the landlord was unaware of the new address of the former tenant or of his responsibility to produce a statement. The production of the statement may lead to agreement between the parties and the withdrawal of the application.

Occasionally, the parties will agree to a mediated solution to the problem without recourse to a formal hearing or the issuance of an order. If the parties wish to try to settle the issue by mediation, the Rental Officer will assist them in the resolution of the matter and the preparation of a mediated agreement.

Often, landlords and tenants can not agree or, more often, one of the parties wants a decision which can be enforced, should the other party fail to abide by that decision. In these cases, the Rental Officer will hold a hearing and, after hearing the evidence and testimony of both parties, render a decision. The Rental Officer will issue a written order along with reasons for the decision. Orders by a Rental Officer may be filed in the Territorial Court and are deemed to be an order of that court when filed. Most disputes are settled in this manner as the majority of disputes concern non-payment of rent and an enforceable decision is desired by the applicant.

Market Trends ¹

Canada Mortgage and Housing Corporation reported that the Yellowknife apartment vacancy rate fell to 0.9% in October 2008, down from 1.2% from the previous October. This represents the lowest vacancy rate since 2002 when vacancy dropped to 0.3%. Vacancies were generally highest in older apartment buildings built between 1960 and 1974 and lower than average in buildings constructed since 1990. Units renting for under \$1000/month had no vacancies and units renting for \$1400 and more had a vacancy rate of only 0.5%. Units renting in the \$1000-\$1399 range had vacancies higher than the average.

The average monthly rent in Yellowknife increased from \$1269 to \$1320 during the period October, 2007 to October, 2008. This represents a significantly larger increase in rents than the previous year when overall average rents for all unit sizes increased by only \$4/month. It is likely that the declining vacancy rate and significant increases in fuel costs were factors driving the increase.

Hay River and Inuvik, the other two NWT communities surveyed by CMHC, have higher vacancy rates than Yellowknife. The Hay River vacancy rate of 2.1% is close to the Canadian average of 2.3%. Inuvik, on the other hand, has a vacancy rate of 5.8% which is higher than all 34 Canadian major centres except for Windsor, Ontario.

It is generally cheaper to rent in Hay River than Yellowknife. The average rent for all units is \$1024. Despite the significantly higher vacancy rate, Inuvik apartment rents are practically as high as Yellowknife. CMHC estimates that the cost of renting a two bedroom apartment in Inuvik is more expensive than ownership.

Rental Office Activity - 2008

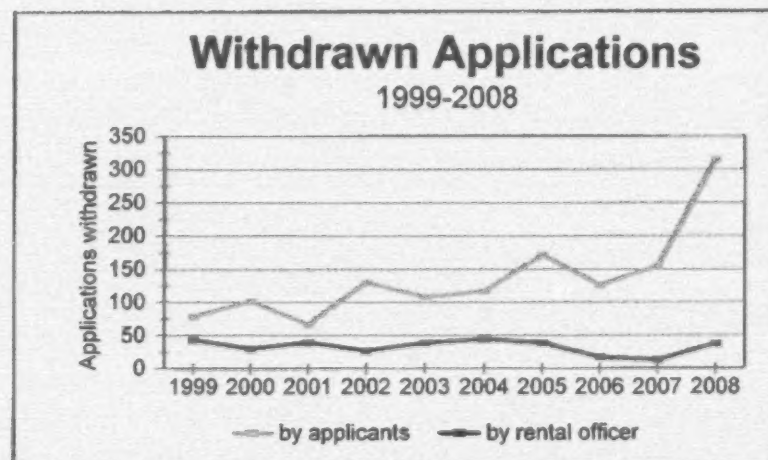
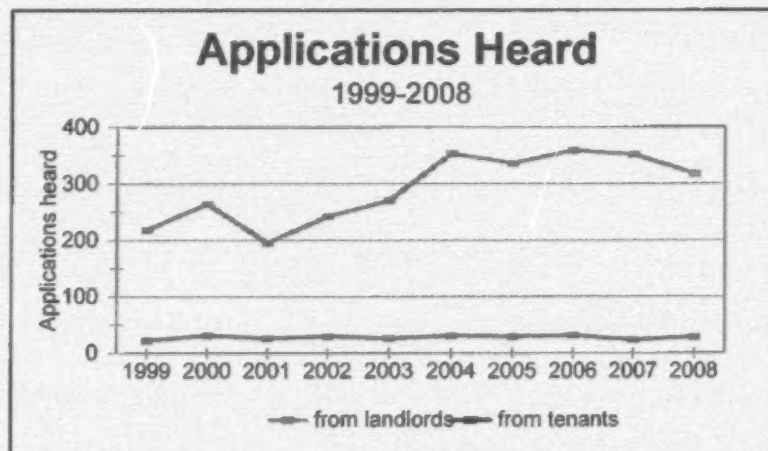
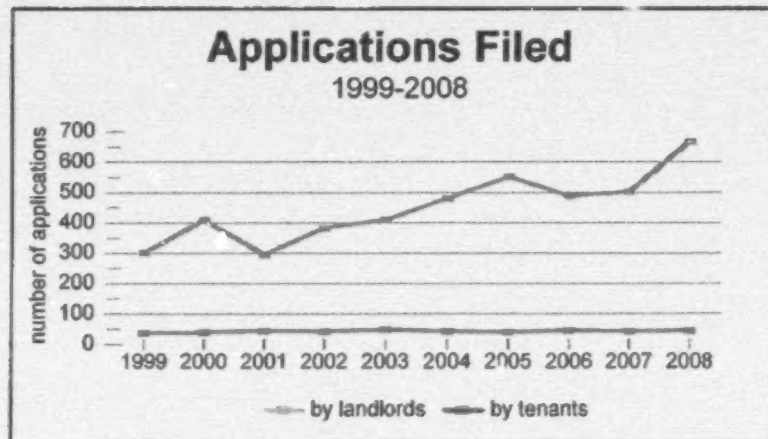
Hal Logsdon served as Rental Officer throughout the year. Mr. Logsdon's appointment was renewed for a three year term on April 1, 2007. Ms. Kim Powless continued to serve as the Rental Office Administrator during the year.

Mr. Logsdon attended the Residential Tenancies Conference in Victoria British Columbia in September. This conference, held biannually, brings together delegates from each province and territory to discuss the administration of the various Residential Tenancy Acts, review changes to legislation and administration and experience first hand, some of the practices of the host province/territory. Of particular interest, was British Columbia's extensive use of telephone hearings and their "desk order" pilot program. The pilot program permits the issuance of an eviction order for non-payment of rent without a hearing provided the tenant does not formally request a hearing. Mr Logsdon was able to sit in on several hearings during his visit which were particularly interesting, given his role as an adjudicator.

The rental officer conducted several *Residential Tenancies Act* seminars for property managers during the year. We continue to offer seminars to landlord and tenant groups at no cost based on our assumption that increased awareness of the Act will result in fewer disputes and less recourse to legal action.

The rental office experienced a steep increase in the number of applications filed by landlords in 2008 yet the number of landlord applications heard dropped to the lowest level in the past five years. One might expect that such an increase in filed landlord applications would also result in an increase in landlord applications heard.

However, it appears that some landlords are content to simply withdraw an application regarding rent if the rent is paid prior to the hearing rather than continue with the hearing to seek an order to pay future rent on time. The trend has resulted in an increased administrative workload on the rental office as more files must be opened and closed.



In contrast, applications filed by tenants increased marginally and tenant applications heard increased by over 20%. It would appear that tenants are more likely to seek remedies as rents increase.

As has always been the case, applications from landlords make up the majority of applications filed and heard. Landlords filed 92% of the applications heard in 2008.

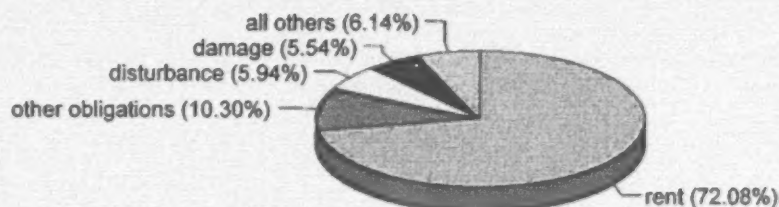
The majority of landlord applications involve the non-payment of rent.

Most of these applications are undisputed by the tenant and result in an agreement between the landlord and tenant about how the arrears will be paid.

The most common tenant applications involve disputes over the retention of security deposits. When a landlord fails to return the security deposit or issue a statement of deductions or when a tenant disagrees with any of the deductions, a tenant may file an application and refer the matter to the rental officer.

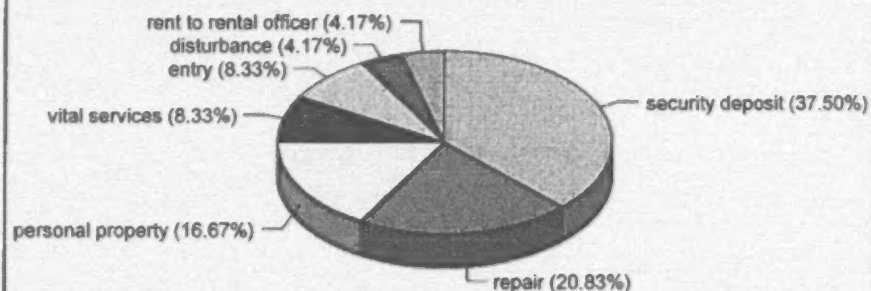
Remedies Provided to Landlords

2008



Remedies Provided to Tenants

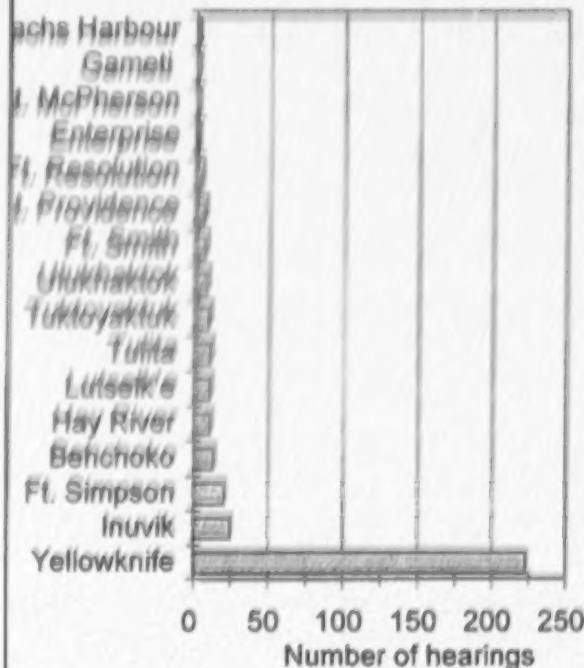
2008



Maintenance and repair issues are also a significant reason for tenant applications.

Hearings Held - 2008

By community



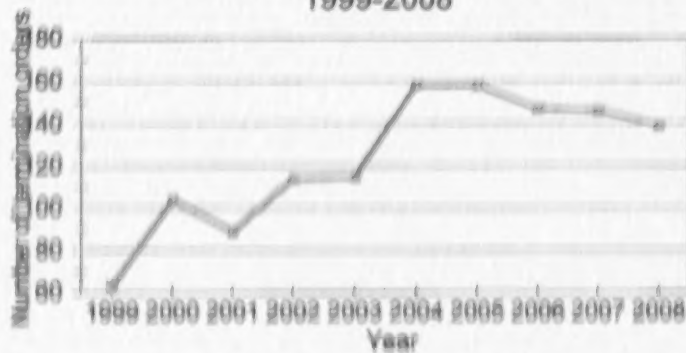
Although landlords are the most frequent users of dispute resolution, we receive many requests for information from tenants by phone, through the website and Email, and at the office.

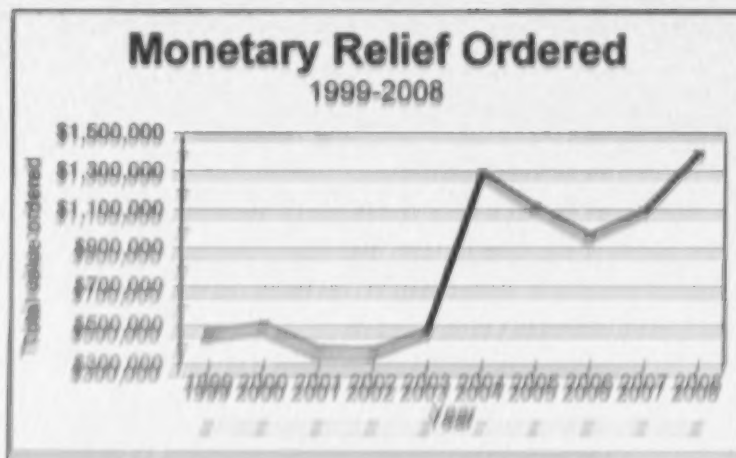
Applications from 16 communities were heard in 2008. Sixty four percent of applications heard related to premises in the City of Yellowknife. Hearings are scheduled approximately every three weeks in Yellowknife and the docket is often filled to capacity. Hearings are scheduled in other communities as applications are received. Hearings by telephone are frequently used when only a few applications are received from a location. Telephone hearings help ensure that disputes outside of Yellowknife are resolved as rapidly as possible. Half of the hearings outside of Yellowknife were conducted by telephone in 2008.

When termination orders are issued, they usually involve some condition which must be met to avoid the termination. In most cases, the condition is to pay the outstanding rent by a certain date. Although 41% of the applications heard in 2008 resulted in a termination order, most were conditional. We estimate that only a few actually resulted in termination of the tenancy agreement. The percentage of termination order issued has remained relatively stable over the past five years.

Terminations Ordered

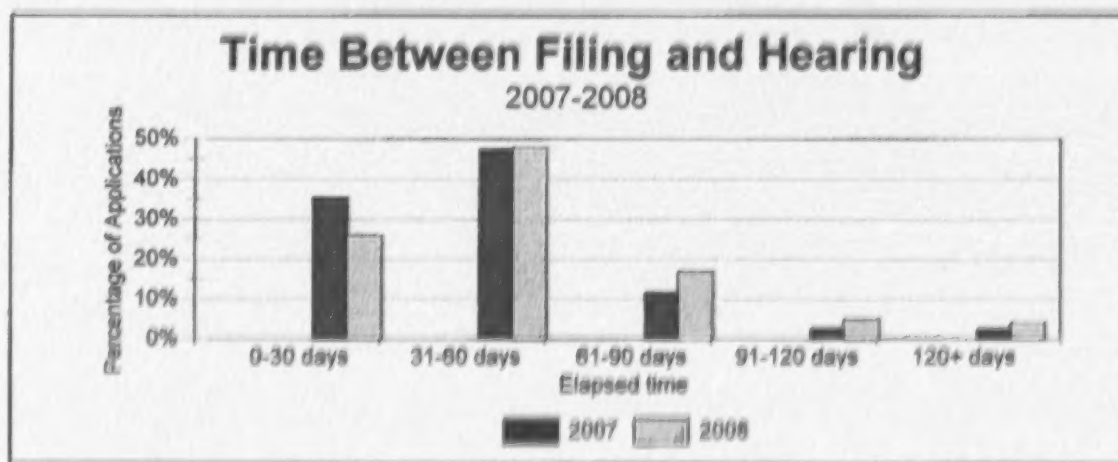
1999-2008





The value of compensation ordered in 2008 increased by almost \$300,000 in 2008. Compensation is most commonly awarded when there have been damages to rental premises but can also be provided for lost rent when premises are abandoned, loss of possession or enjoyment of the premises, or loss of damage to tenant property.

The length of time it takes from when an application is filed to the time it is heard depends on a number of factors, some of which are outside the control of the Rental Office. Users of the services occasionally complain about the length of time it takes to resolve a dispute and we continue to do what we can to make the administration of the process move as rapidly as possible.



From 2005 through 2007 we heard 80% of the applications within 60 days of filing. In 2008 however, we dropped below that target, hearing 74% of applications within 60 days. One of the factors affecting this is the result of a Supreme Court decision regarding service of notices. The Act requires the rental officer to serve the landlord and the tenant with notices outlining the time, date and place of the hearing. This notice may be personally served or served by registered mail. The Act contains a deeming provision which allows the rental officer to consider a notice served seven days after mailing. The Court ruled that this assumption is rebuttable. The result has been that when the rental officer does not have confirmation of receipt of the notice, the matter is often

not heard and another hearing date scheduled.

We are now attempting to phone parties who have been sent notices by registered mail where we do not have confirmation of delivery from Canada Post. This will ensure respondents are aware of the hearing date and have the opportunity to appear at the hearing. We hope this method will assist to keep the time between application and hearing to a minimum.

Residential Tenancies Act Amendments

As noted previously, the Residential Tenancies Act was amended during the 2nd session of the 40th Assembly although the amendments did not come into effect during 2008. The rental office has been working with the Department of Justice to formulate new regulations for the amendments and produce public information regarding the changes.

Many of the changes to the Act are minor in nature and serve to correct inconsistencies in the statute. Others, like the changes to late rent penalties and security deposit interest rates, serve to make the provisions more realistic. Others reflect the views of landlords and tenants which were expressed during the consultation phase of the legislative review.

When the amendments come into effect, a landlord will be able to collect a pet deposit if the parties agree that a pet may be kept on the premises. The amendments will also permit a rental officer to issue orders for eviction. In subsidized public housing, tenancy agreements will automatically renew as is the case in all other premises except employer supplied housing. The public housing landlord will, however, be able to give notice to terminate the tenancy agreement in the same manner as the tenant is required to give notice.

Issues

Last year I noted in my annual report that the changes to the way Public Housing subsidies were provided were causing difficulties for Local Housing Organizations (LHOs) attempting to enforce their right as landlords to collect rent. Unfortunately, this problem continues and LHOs and tenants are becoming increasingly frustrated. From my point of view, both landlord and tenant are both adversely affected by the program as currently designed.

The relationship between a residential landlord and tenant is one of contract. As such, it is governed by the contract between the parties (the tenancy agreement) and the *Residential Tenancies Act*. By requiring tenants to report the household income to the Department of Education, Culture and Employment (ECE), a third party has been introduced which is not a party to the contract and is not within the jurisdiction of the *Residential Tenancies Act* or the rental officer.

The tenancy agreement obligates the tenant to accurately report the household income to ECE and entitles the tenant to a rent subsidy and rent calculated in accordance with *Public Housing Rental Subsidy Program*. If the tenant fails to provide the household income information as set out in the tenancy agreement, the subsidy may be withheld and the full unsubsidized rent applied.

Over the past year, I have encountered numerous cases where the subsidy has been withheld and the full unsubsidized rent applied even though the tenant has fully complied with the obligation to report the household income as set out in the tenancy agreement. This makes it impossible for the LHO to enforce the collection of the rent which has been assessed by ECE because the tenant can not be found in breach of the tenancy agreement or the Act. Consequently the LHO is unable to obtain an order for the rent charged by ECE at the unsubsidized rate. The tenant is similarly frustrated having complied with their legal obligation but nevertheless assessed a rent which is beyond their means to pay.

LHOs also encounter evidentiary problems at rental hearings when the subsidy has been withheld and the full unsubsidized rent applied. Because the income information is not provided to the LHO, they are usually unable to state, with direct knowledge, what income information, if any, the tenant has provided. Some LHOs have called the *Customer Service Officer* as a witness or provided a statutory declaration from the *Customer Service Officer*. Although often necessary to prove the allegations it is a cumbersome and time-wasting exercise.

References:

1. Rental Market Report, Yellowknife Highlights, Canada Mortgage and Housing Corporation, Fall, 2008

**Statistics for the Year
January 1, 2008 to December 31, 2008**

**Applications to a Rental Officer
2000-2008**

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Applications Filed	448	339	426	457	523	591	534	544	711
By Landlords	409	295	384	409	481	551	489	502	667
By Tenants	39	44	42	48	42	40	45	42	44
Applications Heard	295	221	271	296	383	362	390	374	346
From Landlords	264	195	242	270	353	336	359	351	318
From Tenants	31	26	29	26	30	26	31	23	28
Applications Withdrawn	132	106	157	146	161	210	143	168	352
By Applicants	102	67	130	108	117	172	126	155	315
By Rental Officer	30	39	27	38	44	38	17	13	37

**Hearings Held, by Community and Type
2008**

Community	in person	by phone	TOTAL
Behchoko	12	1	13
Enterprise		1	1
Fort McPherson		1	1
Fort Providence		6	6
Fort Resolution		3	3
Fort Simpson	18	2	20
Fort Smith		7	7
Gameti (heard in Yellowknife)	1		1
Hay River		10	10
Inuvik	13	11	24
Lutselk'e	10		10
Sachs Harbour		1	1
Tuktoyaktuk	8	1	9
Tulita		10	10
Ulukhaktok		8	8
Yellowknife	222		222
TOTAL	284	62	346

**Remedies Provided to Landlords
2008**

Remedy	Number of orders	Percentage
Non-payment of rent	364	72.1%
Other obligations	52	10.3%
Disturbance	30	5.9%
Damage	28	5.5%
Security deposit	14	2.8%
Change of use	7	1.4%
Loss of future rent	4	0.8%
Termination/different types	2	0.4%
Termination/sale	2	0.4%
Compensation/overholding	2	0.4%

**Remedies Provided to Tenants
2008**

Remedy	Number of orders	Percentage
Security deposit	9	37.5%
Repairs	5	20.8%
Personal property	4	16.7%
Entry	2	8.3%
Vital Services	2	8.3%
Disturbance	1	4.2%
Rent to Rental Officer	1	4.2%

Terminations Ordered *

2000 - 2008

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Requested by Tenant	1	0	1	0	3	2	2	1	3
Requested by Landlord	104	89	114	115	158	158	147	146	139
As % of Applications Heard	36%	40%	42%	39%	42%	44%	38%	39%	41%

* includes orders which terminate tenancy agreements only if specific conditions are not met.

Value of Compensation Ordered

2003 - 2008

	2003	2004	2005	2006	2007	2008
Total Orders Granting Monetary Relief	238	328	286	327	319	286
Total Value of Orders Issued	\$487,768	\$1,298,310	\$1,124,994	\$978,587	\$1,102,170	\$1,399,362
Average Value	\$2049	\$3958	\$3934	\$2993	\$3455	\$4893

Elapsed Time Between Filing Date and Hearing Date
Applications heard During Period 2004-2008

	2004	%	2005	%	2006	%	2007	%	2008	%
0-30 days	133	34.7%	146	40.0%	131	33.6%	133	35.6%	90	26.0%
31-60 days	173	45.2%	169	46.7%	193	49.5%	178	47.6%	167	48.3%
61-90 days	62	16.2%	35	10.0%	45	11.5%	44	11.7%	59	17.1%
91-120 days	7	1.8%	3	0.8%	10	2.6%	10	2.7%	18	5.2%
120+ days	8	2.1%	9	2.5%	11	2.8%	9	2.4%	12	3.5%